STATE OF MICHIGAN

COURT OF APPEALS

JUSTIN MICHAEL CLARK, a Minor, by and through his Guardian, CLAUDETTE THORPE-CLARK,

Plaintiff-Appellee,

and

MARK SILVERMAN,

Intervening-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
June 27, 2006

No. 259562
Wayne Circuit Court
LC No. 03-303779-NF

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff's motion to enforce a settlement agreement. We affirm.

Defendant argues that the parties never reached a settlement enforceable under MCR 2.507(H), and that, if they did, the agreement was repudiated by plaintiff's mother and co-conservator, Claudette Thorpe-Clark. We disagree.

The construction and application of a court rule is a question of law that is reviewed de novo. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 133; 624 NW2d 197 (2000). An agreement to settle a pending lawsuit is a contract governed by the legal principles applicable to the construction and interpretation of contracts. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 668; 649 NW2d 760 (2002). However, a settlement agreement that fulfills the requirements of a valid contract will not be enforced unless it also satisfies the requirements of MCR 2.507(H). *Id.* at 668-669; see also *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484-485; 637 NW2d 232 (2001). MCR 2.507(H) states:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by *either* party, is not binding unless it was made in open court, *or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney*. [Emphasis added.]

A letter, signed by the attorney of the party against whom an agreement is sought to be enforced and indicating the terms of the agreement, is sufficient to bind the party to the agreement irrespective of the fact that the actual agreement was not signed by the parties. *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994).

In this case, the evidence submitted by the parties showed that on June 30, 2004, after facilitation, defendant's attorney, John Brennan, sent a letter to plaintiff's attorney, Mark Silverman,[1] summarizing plaintiff's settlement offer. On July 1, 2004, Silverman faxed Brennan a copy of the settlement agreement. On the same day, Brennan wrote Silverman a letter confirming defendant's acceptance of the settlement agreement. In that letter, Brennan specifically stated that defendant "agreed to pay the total sum of $1,111,728.00 as a full, final, and complete settlement of your client's claims for personal injury protection benefits from the date of this loss through July 31, 2004, and agreed to the terms and conditions applicable to the future payment of benefits as set forth in your settlement agreement." On July 12, 2004, Brennan wrote Silverman another letter expressing his hope that the probate court would approve the settlement agreement "which was reached between the parties."

The submitted letters, particularly the July 1, 2004, letter, express defendant's written agreement to the terms of the settlement. Thus, the letters constitute written "evidence of the agreement . . . subscribed by the party against whom the agreement is offered or by that party's attorney." The trial court correctly held that the requirements of MCR 2.507(H) were satisfied and that the settlement agreement was therefore enforceable against defendant.

We reject defendant's argument that Thorpe-Clark repudiated the settlement agreement and that defendant thereafter acquiesced to this repudiation. It is clear from the record that Thorpe-Clark refused to sign the agreement only because of a fee dispute with Silverman. There is no evidence that Thorpe-Clark ever repudiated the settlement agreement itself. In any event, even if Thorpe-Clark did attempt to repudiate the agreement, the agreement remained enforceable under MCR 2.507(H). On July 1, 2004, and again on July 12, 2004, after learning of the rift between Thorpe-Clark and Silverman, including Thorpe-Clark's refusal to sign the agreement, Brennan reaffirmed his belief that the parties had reached a settlement, and expressed his hope that the probate court would enforce the agreement and that the fee dispute between Thorpe-Clark and Silverman would be resolved. Thus, as of July 12, 2004, there was an enforceable settlement agreement that had not been repudiated by either party—and certainly not by defendant.

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[1] This Court permitted Silverman to intervene in this appeal as an appellee.

On July 13, 2004, this Court issued its decision in *Cameron v Auto Club Ins Ass'n*, 263 Mich App 95, 96-97, 103; 687 NW2d 354 (2004), lv gtd 472 Mich 899 (2005), holding that MCL 600.5851(1) does not toll the "one-year back rule" of the no-fault act, MCL 500.3145(1), while an injured plaintiff is a minor. As of the day *Cameron* was decided, plaintiff had not done anything that could be characterized as a repudiation of the settlement agreement. Rather, after this Court decided *Cameron*,[2] it was defendant who took the position that there was no enforceable settlement agreement, while plaintiff moved to enforce it under MCR 2.507(H). The trial court did not err in rejecting defendant's argument that the settlement agreement was mutually repudiated by both parties.

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Donald S. Owens

[2] Under *Cameron*, plaintiff would not be entitled to recover a substantial portion of the damages he sought.